

TRULINCS 18002047 - WALTERMEYER, BROCC T - Unit: COL-A-A

FROM: 18002047
TO:
SUBJECT: Obj
DATE: 09/04/2022 12:47:50 PM

FILED - USDC -NH
2022 SEP 15 AM 11:13

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Brocc T. Waltermeyer,

Plaintiff,

v.

Case No.: 19-cv-233-LM

Warden, FCI Berlin,
et al.,

Defendants.

PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S
REPORT AND RECOMMENDATION

Brocc T. Waltermeyer, proceeding pro se, respectfully submits his objections to the Magistrate's Report and Recommendation in the above-styled case. Dkt. 21.

I. Relevant Background

On June 16, 2022, this court issued its Report and Recommendation (hereinafter "R&R") in the instant case, Dkt. 21, and on the same day, ordered Defendants to respond to Waltermeyer's Amended Complaint. Dkt. 22. On August 8, 2022, Waltermeyer requested leave to file out-of-time objections to the R&R, due to delayed service. Dkt. 23. On August 10, 2022, Defendants requested leave to extend its deadline to respond to Waltermeyer's Amended Complaint, Dkt. 24, which this court granted. Dkt. 25. And on August 24, 2022, Defendants requested a further extension to respond to the Amended Complaint pending Waltermeyer's objections to the R&R. See Dkt. 26 at 1. This court granted Defendants' request. Dkt. 27. Waltermeyer presents his objections to the R&R below.

II. Standard of Review, Background, and Facts Asserted

For the sake of judicial economy, Waltermeyer does not object to any of the facts or arguments presented in the Standard of Review, Background, or Facts Asserted sections of the R&R. Dkt. 21 at 1-3; also e.g. Fed. R. Civ. P. 1.

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III. Claims

During the course of proceedings in this case, Waltermeyer has received treatment for both Hepatitis C and lipoma. E.g., Dkt. 1 at 2-3 and Dkt. 21 at 4. Waltermeyer respectfully requests this court dismiss Claims 1 and 2, so that the parties may focus on the sole remaining claim, Claim 3. This request will also serve to economize this court's scarce judicial resources.

IV. Discussion

Waltermeyer objects to the R&R to the extent this court recommends dismissing Does 1-30. Dkt. 21 at 4-6. In the attached Motion Requesting Permissive Joinder, Waltermeyer explains that the unnamed Does are members of the Utilization Review Committee ("URC"). Mtn. Req. Per. Joinder at 3. While the Bureau of Prisons does identify some of the roles that comprise the members of the URC, Waltermeyer does not have access to any lists or rosters that identify these individuals. Id.; see also Bureau of Prisons Program Statement 6031.04 para. 7 (Patient Care). Yet it is the URC that determines whether Waltermeyer can receive any treatment from an outside medical facility, including knee surgery. PS 6031.04 at para. nos. 7(a)-(e); see also Chaney v. United States, 2015 U.S. Dist. LEXIS 188420 *32-33 (N.D. Ga. 2015) (describing the function of the URC and member's roles of an empaneled URC). As the unnamed individuals are an integral component of deciding whether to provide Waltermeyer with the treatment he seeks, he respectfully objects to the Report's recommendation to dismiss Does No. 1-30. (1)

V. Conclusion


Waltermeyer respectfully objects to the above-stated arguments, in order to preserve the issues for appeal, should the need arise.

¹ In his Motion Requesting Permissive Joinder, Waltermeyer suggests that Counsel for Defendants, to the extent practicable, "could name ... appropriate members of the FCC Coleman Low URC" in order to "permissively join the appropriate parties in this action." Mtn. Req. Per. Joinder at 3.

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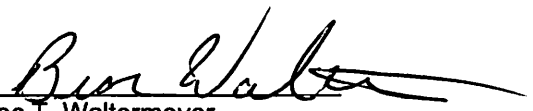
FROM: 18002047
TO:
SUBJECT: Sigs
DATE: 09/04/2022 11:35:52 AM

Respectfully submitted ^(*) by Brocc T. Waltermeyer on this 5th day of September, 2022:


Brocc T. Waltermeyer
Reg. No.: 18002-047
Federal Correctional Complex
Unit A-1 (Low Custody)
P.O. Box 1031
Coleman, FL 33521-1031

CERTIFICATE OF SERVICE

This motion was delivered to the prison mailing authorities on the same day as signed, and placed inside a postage-prepaid, properly addressed envelope. The original motion was delivered via United States First Class Mail to the United States District Court for the District of New Hampshire, Office of the Clerk at 55 Pleasant Street, Concord, New Hampshire, 03301. A copy of this motion was delivered via United States First Class Mail to Counsel for Defendants, at 53 Pleasant Street, Fourth Floor, Concord, New Hampshire, 03301.


Brocc T. Waltermeyer

VERIFICATION

Pursuant to 28 U.S.C. Sec. 1746, I declare that the factual allegations and factual statements contained in this motion are true and correct to the best of my knowledge.


Brocc T. Waltermeyer

/* Pursuant to Johnson V. Avery, 393 U.S. 483 (1969), I received assistance from a fellow inmate with the preparation and filing of this motion.

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FROM: 18002047

TO:

SUBJECT: Decl.

DATE: 09/04/2022 11:34:53 AM

SECOND DECLARATION OF BROCC T. WALTERMEYER

Pursuant to 28 U.S.C. Sec. 1746, I declare the following to be true:

1. My full name is Brocc T. Waltermeyer. My USMS number is 18002-047.
2. I am currently incarcerated at FCC Coleman Low, in Sumterville, Florida.
3. Prior to my incarceration at FCC Coleman Low, I have been incarcerated at USP Terre Haute (Indiana); USP Leavenworth (Kansas); FCI Oxford (Wisconsin); and FCI Berlin (New Hampshire).
4. I have reported problems with my knees to BOP Health Services staff at the above-listed prisons since 2011.
5. The medical staff at all of the above-listed institutions have documented the downward progress of the condition of my knees.
6. Currently, I have limited movement in my knees. I cannot squat or lift items off the ground.
7. I have severe pain that wakes me up at night, causing chronic insomnia.
8. I cannot walk for more than 20 minutes at a time without my knees swell up to the size of grapefruits.
9. While walking, my knees will buckle, causing me to stumble and fall.
10. I cannot run.
11. While at FCC Coleman Low, I have been taking 800mg Ibuprofen tablets and cortisone steroid injections for pain

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relief. However, the pain has become so severe that these interventions are no longer effective.

12. To aid with my mobility, I have been given access to a dormitory on the ground floor, a lower bunk, permission to wear tennis shoes on the compound (instead of hard-toe boots), and restriction from sports or exercise-based activities.

13. Because I cannot exercise, I have gained 65 pounds during my incarceration. My obesity, combined with the side-effects of the cortisone steroid injections, creates even more stress on my knees.

14. I have not been offered any canes, walkers, or prosthetics to aid my walking.

15. In July of this year, I visited an outside doctor to have my knees examined.

16. The doctor recommended that both of my knees should be replaced. However, as the BOP would only authorize him to replace one knee at a time, the doctor asked me: "which one do you want to replace first?"

17. After this visit, I asked FCC Coleman Low Medical Services regarding the status of my request. I have not received a response.

18. My current release date is 2030. At this rate, I will be unable to walk long before then.

19. I was shipped from New Hampshire to Florida—2,000 miles away—because I asked for help.

20. I'm afraid that if I continue with this litigation, I'll end up on a plane again. Maybe this time, I'll end up in California.

21. I simply ask to receive the medical attention I desperately need, so I may use the rest of my sentence to make myself a better person.

Under penalty of perjury pursuant to 28 U.S.C. Sec. 1746, I hereby declare that the factual allegations and factual

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statements to be true and correct to the best of my knowledge.



Broc T. Waltermeyer

9-5-22
Date